

1969

## Volume 02 (Part 2 of 6)

Cuyahoga County Court of Common Pleas

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clothing. The only reason I recollect Mr. Evans was the way he was dressed. He had a bright shirt on, medallion, and goatee, which is this (indicating).

Q And what, if any business, did you transact with him?

A There was another sales clerk in our department that night that we were showing on sales and that. At this time, two gentlemen had come in for guns, one being Mr. Evans.

The salesman showed him where the book was that we registered firearms in and at this time I took the sale.

Q May I stop here? You said you registered in a fire-arm book the sale?

A Yes.

Q Pursuant to a subpoena, did you bring that book down to me?

A Yes.

(State's Exhibit 44 was marked for the purpose of identification.)

Q At this point, may I interrupt your testimony and show you State's Exhibit 44?

A Yes, this is our book from the Northfield store.

In this we -- everytime somebody purchases a gun, we have to get some sort of identification off of them, driver's license or something to show their picture, put their address down and then have them sign the book that they have purchased the gun from us.

Q Well, we will get back to this in a little while.  
You say Mr. Evans and another gentleman came in the store and describe to us what business they did with you, first.

A Just --

Q Start from the beginning when you approached them, what did they say, what did they want, what you did, what they did.

A Like I said, this other clerk was on. Two gentlemen came to the counter. They started questioning him on guns, so I stepped over and started answering some of their questions. So they wanted to know if we had any -- the carbines on the rack were 30 caliber carbines and these were not. They were 22's.

I just briefly answered their questions as to how many shots these would hold, the type, took one out of the rack, let them look at it, just inspect the gun and answered their general questions on how the gun operated and the type of ammunition as we had just received these guns not too far before, so they were a new item on our shelf.

Also, they were the -- they were at a very reasonable price, compared to the other 22's, were quite low for being heavy shot or large amount shot capacity instead of being a single shot, and that was about it, other than they wanted to know if we had the ammunition for them, and from there, they decided just to purchase them.

The -- there was three of us behind the counter. One salesman took the one gentleman. We have a register in the middle, took him to one side, got a rifle there. I was on the other side with the other clerk and as he put the rifle down, I got the boxes for these rifles.

Now, I took -- which would be Mr. Evans, got a driver's license, found a page with a blank space on it, where I could write the name in and everything, just took it off the driver's license and then turned the book over to him for him to sign.

And the other gentleman got the ammunition that these gentlemen wanted, took care of the sale while I finished taping up the box. We put these in a box so they can go out the store.

Q Was there any discussion about 30 calibers?

A Just at the beginning when they first walked in, they thought these were 30 caliber and they are not. They look identical to them.

Q Then did you sell some 22's to the gentlemen?

A Yes. The other clerk got a carton, 500 rounds and the other gentleman, I believe, took about 200 rounds.

Q All right. Now, showing you what has been marked as State's Exhibit 44, on a page by itself I see the name of Fred Allen Evans, 11105 Superior, Cleveland 44108.

What can you tell us about this transaction?

A This is the one where it is in my writing.

I copied it off of the license, put it down. I asked, is this the present address? And then from there, below it, I put "Marlin .22-caliber carbine clip action," and then I had the gentleman sign.

Q Mr. Evans signed that book in your presence, then?

A Yes.

Q You want to hold that a minute? You want to give me that Marlin?

THE COURT:

Did you mention

a page number in the book?

THE WITNESS:

No, sir, these

are not numbered.

(State's Exhibit No. 45 was marked for identification.)

Q Handing you what has been marked for the purpose of identification as State's Exhibit 45, identify that exhibit, sir.

A This would be one like we would handle at the time. I couldn't tell if it would be the exact one, because ours didn't have a sling on it when we sold it, but this is the

type carbine clip action.

Q The fact there is no serial number on these?

A As they come in, no, most of them on rifles or shotguns they put no serial numbers, just the make, model.

Q Incidentally, is this the clip that he bought?

A No. The clip comes with the gun. It's a clip action.

Q How many bullets can be put in?

A I believe on this model that we are looking at, there are seven.

Q How do they fire with that gun?

A As fast as you can squeeze that trigger.

Q Just pull and shoot?

A Right. The first one, you have to pull it back (indicating), put it in the chamber.

Q Then you are in business with the rest of the bullets?

A Yes.

Q Showing you another page of this record book, State's Exhibit 44, where we found the name of Ralph Richard Smith, 12312 Auburndale Avenue, Cleveland 44108, Marlin .22-caliber carbine.

Can you tell us what that transaction was?

A This transaction here was handled by another salesman; all told that evening we had three transactions.

First was the gentleman that came in, which was on this page here (indicating), and purchased a .22 carbine with some ammunition and then left.

Later that same evening, it might have been about 8:00 o'clock, then Mr. Evans and another gentleman came in.

MR. FLEMING:                      Objection.

Q        Mr. Evans --

THE COURT:                      The question had to do with the signature of Ralph Richard Smith on that book with what you were asking him about.

Q        Yes. Is this the transaction of the Smith that you identified came in with Mr. Evans?

A        This is where I believe that the man came in with Mr. Evans was Mr. Smith.

Like I said, there was another gentleman with him; another salesman handled him. It was either Mr. Smith that was with him, or this Mr. Mitchum; but "Smith" is the name I remember being mentioned.

MR. TOLLIVER:                      Objection.

MR. FLEMING:                      Objection, your Honor.

THE COURT:                      Is it my understanding that you do not recognize the name "Ralph Richard Smith" in the book, or do you recall when it was put in or who put it in?

THE WITNESS: I know who put it in, but I don't recollect when.

Q Do you remember the circumstances?

THE COURT: Other than just purchasing the .22-caliber carbine.

Was it the individual that you previously testified to was with Mr. Evans?

THE WITNESS: I believe that Mr. Smith was the one that was with him. That's all that --

Q All right. Now, --

A That night, I just --

MR. FLEMING: Objection.

Q Oh --

A I just remembered the Mr. Smith.

MR. LAURIE: I didn't say a word.

MR. FLEMING: The same objection.

MR. LAURIE: I will withdraw it now from the record.

THE COURT: All right. The jury will disregard the question and any answer that was given, the last question by Mr. Laurie with reference to the Mr. Smith.

Q Did a Mr. Smith come in with Mr. Evans to make a



purchase, as far as you can recall?

A Yes, sir, as far as I recall.

Q Does the entry appear in that book?

A Right.

Q And does that signature "Smith" appear under the Marlin sale?

A Yes.

MR. FLEMING: We have this objection. May we approach the bench?

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

THE COURT: The objection is sustained.

Q Were you present when a Mr. Smith bought a gun?

A Yes.

Q Does that transaction appear in that book, sir?

A Yes.

Q And his signature appears in that book, buying that gun?

A Yes.

Q To the best of your recollection, did I understand that a Mr. Smith came in with a Mr. Evans, approximately, and together? Did business approximately together?

MR. FLEMING: Objection.

MR. TOLLIVER:

Objection.

Objection to the "approximately."

MR. LAURIE:

I will take out

the word "approximately."

THE COURT:

Objection sustained.

Q (By Mr. Laurie) Did they come in and do business with your company?

A Yes.

Q All right. Did there come a time, sir, in your line of business, that particular day, you came across a man by the name of James Mitchum?

MR. TOLLIVER:

I didn't hear that

last question.

A No.

THE COURT:

Did he come across

a Mitchum?

The answer is: No.

A No.

Q (By Mr. Laurie) I see an entry in this book (indicating), a James Mitchum, living at 11804 Ablewhite Road, Cleveland 44108, a Marlin .22-caliber carbine, and the name "James Mitchum,"

Do you know anything about that transaction?

A No. This is the one that was supposed to have been the first one in the evening.

Q Do you know anything about that one?

A No.

Q You weren't there?

A I know it was sold. I was there. I know the gun was sold. I didn't handle the transaction.

Q But did you see that transaction being made?

A Yes.

Q Did you look at that man, too? Did you see that man - Mr. Mitchum - when he bought the gun?

A Just briefly, from when he was in the store.

Q Have you seen him after that particular sale again or not, sir?

A Yes.

Q Under what circumstances did you see Mr. Mitchum after he bought that caliber carbine?

A After the last gentleman came in --

MR. TOLLIVER: Objection.

THE COURT: Overruled.

MR. TOLLIVER: It hasn't been shown they were together.

THE COURT: Overruled.

Q Go ahead.

get a hold of the duty manager, because all of a sudden we were selling these carbines and in large --

MR. TOLLIVER:                      Objection.

THE COURT:                      Don't tell why you did go up and get your duty man.

THE WITNESS:                      Right.

Q        (By Mr. Laurie)    Proceed.

A        We watched the two gentleman go out.    The other salesman that handled the third transaction had come up. These two gentlemen got into another car and I believe the first -- there was a gentleman in this car. This was the first gentleman that came in and purchased the gun that evening.

Q        They got in the same car?

A        Yes.

Q        And, now, why did you go up and get the manager?

MR. TOLLIVER:                      Objection.

MR. FLEMING:                      Objection.

THE COURT:                      Sustained.

Q        What caused you to go up and get the manager?

MR. TOLLIVER:                      Objection.

MR. FLEMING:                      Objection.

THE COURT:                      Sustained.

Q        Well, what caused you to go to the window to see where these two men were going?

MR. FLEMING:

Objection.

THE COURT:

Overruled.

A Well, I didn't go to the window.

Q (By Mr. Laurie) Wherever you went, to the door, you observed something outside?

A Our desk is right where there's an entrance door, and then the exit is down and you have got big windows to look out the store there.

And as I was talking to the duty manager, they had gone out the store and, like I said, the other salesman had come up and we had observed them getting into a car.

Now, this salesman handled the third transaction.

Q What caused you to make this observation outside?

MR. TOLLIVER:

Objection.

THE COURT:

Sustained.

Q What caused you to go and follow the area where the two men were going?

MR. FLEMING:

Objection.

THE COURT:

Sustained.

Q Now, when you were watching out of the window, the door, or whatever you were watching, out of the building, and you saw the three men getting together in the car, what were their names again, now that you have refreshed your memory from your book?

MR. TOLLIVER:

Objection.

MR. FLEMING:

Objection.

THE COURT:

Do you know the

names of the three?

THE WITNESS:

Just from the book.

THE COURT:

Well, you know the

names now?

THE WITNESS:

Right.

Q (By Mr. Laurie) Will you give them to us again?

A Excuse me?

Q The three men.

A Mitchum, Smith, and Evans.

THE COURT:

We will take our

recess for lunch at this time.

Once again, as you are out of the courtroom,  
don't talk to anybody, don't let anybody talk to you.

- - -

(Thereupon an adjournment was taken to  
1:15 o'clock p.m., Monday, April 14, 1969, at which  
time the following proceedings were had:)

- - -

MONDAY AFTERNOON SESSION, APRIL 14, 1969      1:30 P.M.

- - -

THE COURT:                      Be seated, please.

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, recalled as a witness DENNIS CARL RANC, who, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION (CONTINUED)

BY MR. LAURIE:

Q        Calling your attention to the weapon sale to one James Mitchum, what type of weapon was that again?

A        It was a Marlin .22 caliber carbine, the same as the other two.

MR. LAURIE:                      Would you mark this  
as an exhibit, please?

(State's Exhibit 46 was  
marked for identification.)

Q        (By Mr. Laurie)    Handing you what has been marked as State's Exhibit 46, will you identify this weapon and tell us if you know anything about it?

A        This is the same type as purchased that night. It is a .22 caliber. This is a Marlin, and this one is ours.

Q        It is yours?

A Right, see the grain in the stock?

Q Yes.

A It is polished. It will come out and notice -- I work on guns part-time, and those stocks, I know stocks, and pick them out. This was put aside at our store when it came in to be purchased. This one is ours.

Q All right, then this is the same type of weapon that both Mr. Mitchum and Mr. Evans bought, is that what you're saying?

A Yes.

Q Again, it has a clip in there, is that the way it was bought?

A Yes, they are all equipped with a clip.

Q And it works the same as the other ones you get one in and you go to work on the rest of them?

A Right.

Q When you --

A They don't come with a sling, though.

Q When you sold the three guns, as you indicated, the three Marlins, can you tell us how they were sold, that is what do you do with them after they are picked, the guns, and they want to take them out?

A We keep the empty cartons below the counter, for the weapons that are out on the rack for sale. We then went and got the boxes, I believe one was in the back room,



and we put them in a box, whatever ammunition they have, we have to put in a bag and staple it.

Then the register tape that the customer gets is taped on the box or the bag is taped to the box also, so they can go through the main door to show they have paid for it in our department, because there is only two departments in the store where we can ring up our own sales, all the rest have to go through the main register; so this way, we have our tape on there and the girls at the register will honor it and the customer can walk out the store.

Q Were these three weapons then put in cartons?

A Yes, they were.

MR. LAURIE:

Would you mark these,

please?

(State's Exhibits 47, 48 and 49 marked for identification.)

Q (By Mr. Laurie) Handing you what has been marked for identification purposes as State's Exhibits 47 and 48 and 49, please observe each of them carefully and tell us if you can identify any or all of them.

A This one, this has our price ticket and label right on it (indicating).

Q You are referring to State's Exhibit 47, right, and you say your price tag is on there from Forest City?

A Right, it has 8 our department letter, and it has 111, this is -- that's an inventory reference, 3988, and it has Forest City right on there, our label.

Q And is this one of the boxes that the Marlin was sold in?

MR. TOLLIVER: Objection.

THE COURT: Overruled.

THE WITNESS: Yes.

MR. LAURIE: The answer is yes?

THE WITNESS: Yes.

Q (By Mr. Laurie) Handing you what has been marked as State's Exhibit No. 49, can you identify this exhibit?

A The same as 47, price tag, department number and Forest City on it, plus also it has the type gun on there, 7 shot clip, .22 caliber.

Q Marlin?

A Marlin.

Q And is this one of the boxes that one of the three rifles was sold in?

A Yes, yes.

Q Both State's Exhibits 47 and 49 which you just testified to, both have the tag Marlin on them?

A Yes.

Q What are these two white tags on here (indicating)? Can you explain on each of them?

A That would be from General Wholesale Sports, Incorporated, who they purchased the guns from. It is their shipper. It states General Wholesale Sports purchased from -- auto loader, M-2 carbine, .22 long rifle, well, "LR".

Q The same appearing on 49?

A Yes.

Q Referring again to the three guns you testified to?

A Right.

Q Right, now State's Exhibit 48, can you identify this particular exhibit?

A 48 is the same as 47 and 49, our tag, Forest City, department number and Marlin, would be the same type of box, this would be the box.

Q That you put one of the three rifles in?

A Yes.

MR. LAURIE:  
as State's Exhibit 50?

Would you mark this

(State's Exhibit 50  
marked for identification.)

Q (By Mr. Laurie) Handing you, sir, what has been marked for identification purposes as State's Exhibit 50, can you identify State's Exhibit 50, which presumably consists of two parts?

A One of the two has part of a green label on it, the

same shade of green as we use. This is all I can identify on it.

Q Referring--

A It has no printing on the tag that I can see to give a name or anything, but it has the same shade of green that we were using at that particular time.

Q What are these boxes, though?

A These will hold 10, 50 packed boxes and listed as 500 rounds in one of these cartons.

Q 500 rounds of what?

A .22 long rifle ammunition.

Q What was the type of ammunition Mr. Evans purchased?

A Long rifle ammunition.

Q How many did he purchase?

A 500.

Q And what kind of ammunition did you sell him of those .22?

A The Winchester is what we carry.

Q Superspeed?

A Yes, that is a different type.

Q This is a different type?

A This is a different type, this is long.

Q This is a long rifle, which were the type you sold him?

A Long rifle.

Q Which would be this box, here, which is -- well, we had better mark it.

MR. FLEMING:

Objection to this.

THE COURT:

He is marking part of them now, so that will be 50 and 51?

MR. LAURIE:

We will make it A and

B.

(State's Exhibits 50-A and 50-B marked for identification.)

Q (By Mr. Laurie) Again, referring to State's Exhibit 50-A, I take it, then, that's the box of ammo that you sold Mr. Evans?

A Yes.

MR. FLEMING:

Objection.

THE COURT:

Overruled.

MR. LAURIE:

All right, and how many is in that box?

A It would be 500 rounds.

Q 500 rounds, and how many total rounds did you sell Mr. Evans that day of .22 rifle shells?

A 500.

Q 500?

A Yes.

Q That would be one box?

A Like this, there are 10 individual little ones.

Q But one large box like this?

A Yes.

Q And Exhibit 50-B is a similar type shell and what is the difference again?

A The one we carry here (indicating) is long rifle. This is a long. .22 comes in three types, short, long and long rifle.

Q All right, and besides the 500 that you sold to Mr. Evans -- you earlier testified you sold how many rounds of the other type of shell?

A The other gentleman, 200 rounds.

Q Of what type shell?

A .22 long rifle.

Q .22 long rifle?

A (Witness nods.)

MR. LAURIE: Would you mark these as Exhibit 42-A, 42-B and 42-C?

(State's Exhibits 42-A, 42-B and 42-C marked for identification.)

Q (By Mr. Laurie) Again, momentarily referring you back to State's Exhibit 50-A, this is an empty cartridge box, then, is it not, sir?

A Yes, sir.

Q Thank you. What has been marked for identification purposes as State's Exhibits 42-A and 42-B and 42-C, will you pull these out, sir, and tell us if you can identify these three exhibits?

THE COURT:

Exhibit 42?

MR. LAURIE:

Exhibits 42-A,

42-B, and 42-C.

A These are ammunition purchased at our store. They have our green tags. On one you can make out "Forest City" on it.

Unless I took the tag off the bottom of these here, but they are the same color as ours. That one says "Forest City," but these are too, whatever you want to call it, they are unreadable.

Q But the green tags on those boxes, tell me are they similar to the one on 42-C?

A Yes.

Q You did say earlier you sold how many rounds of .22 long rifle to Mr. Smith?

A Mr. Smith - 200 rounds.

Q Mr. Smith - 200 rounds.

Can you explain how many boxes would 200 rounds contain??

A Four.

Q So there is fifty in each?

A That is right.

Q And the contents of these, if they are full, would be how many?

A These three, here, alone?

Q Yes.

A 150.

Q And there are only three boxes here?

A Yes.

Q And they are .22 rifle longs?

A .22 long rifles, yes, sir.

Q Does this ammo fit those three Marlins?

A Yes, sir.

Q And the ammo that we described earlier, in the larger container, did they fit the three Marlins?

A The 500, yes, sir.

Q The 500 rounds?

A (Witness nods.)

Q Now, after you made these sales, you made whatever observations you made outside in the parking lot, what next did you do, if anything?

A After the observation?

Q Yes.

A We went back to our department, took a cart, took the guns off our shelves, took what remaining ammunition we had down below our shelves and put it in the cart and took it in



our back room. And in the sporting goods department, we have a locked cage that we put this in so nobody can get at the ammunition and the guns, and we took it off the shelf that night.

Q You quit selling it that night?

A Yes.

Q And was your store still in business otherwise?

A Yes.

Q Why did you remove all the weapons and the ammunition from your shelves?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Sustained.

MR. LAURIE: Did you have a reason to remove all of the weapons and ammunition from your counters and wherever you kept them?

MR. FLEMING: Objection.

THE COURT: The answer is:

Yes, or no, did you have a reason?

THE WITNESS: Yes.

Q (By Mr. Laurie) Tell this jury what that reason was?

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Sustained.

MR. LAURIE: Your witness.

CROSS-EXAMINATIONBY MR. TOLLIVER:

Q Mr. Rane, first of all, showing you what has been marked State's Exhibit --

A If I turn to listen to him -- would you get on this side? I am deaf in this ear.

Q All right. Showing you what has been marked as State's Exhibit 44, I believe you testified that in here, let's see if I can find it, the place where Fred Evans signed that he bought a rifle?

A Yes, sir.

Q Where is that?

A (Witness indicates.)

Q Now, sir, what date did you say this occurred on?

A The 19th of -- on Friday night.

Q There is no date written on here, is there?

A No, sir.

Q Then you are going by memory?

A Yes.

Q Going by memory?

A Yes.

Q Now, you sell guns in your place, is that correct?

A Yes, sir.

Q That's one of the items you sell?

A Correct.

Q In other words, any person can come in and buy if he properly identifies himself?

A Yes, sir.

Q So there is nothing unusual about people coming in and buying guns in your place, is there?

A This night, there was.

Q This night there was?

A Right.

Q Well, these three men came in, or did two of them come in together?

A First one and then two.

Q And then two?

A Right.

Q Now, did you say this was on the 19th of July, although you have no date written in here?

A That is right, This is the 19th. There is no date on there.

Q First it says here, "Marlin .22-caliber carbine," is that right?

A Yes, sir, that is right.

Q But there is no serial number --

A No, these rifles don't come with a serial number.

Q But you remember this was the 19th of July?

A Yes.

Q Did you wait on Mr. Evans?

A Yes, sir.

Q Did you wait on other people?

A No other people were present.

Q So then, well, did you wait on anybody the next day or the next week or the week before and sell them a gun?

A No, sir, because we had them off the shelves and we didn't put them back.

Q You didn't sell any more guns?

A No.

Q Now, was the 19th the last time you sold guns?

A For me, yes, sir.

Q For you. You haven't sold one, since?

A No, I haven't been there, because of my present job.

Q / Oh, you left there?

A Right.

Q Then this book that you had, was this your personal book?

A No, sir.

Q Who does this book belong to?

A Forest City.

Q And you are no longer at Forest City, is that right?

A Right.

Q So, is this your handwriting?

A Yes, sir, it is.

Q This is your handwriting?

A Yes.

Q But you acknowledge there is no date on there?

A Yes, sir.

Q Now, this other man that you testified to, I guess he is back here?

A Yes, sir.

Q Back here (indicating)?

A Yes, This Ralph Smith,

Q Is that your handwriting?

A No, sir.

Q So you didn't wait on him?

A No, sir.

Q "James Mitchum" - is that your handwriting?

A No, sir.

Q You didn't wait on him?

A No, sir.

Q And there is no date on here, either, is there?

A No, sir.

Q Just written in the book, they bought a gun,

.22-caliber carbine, but no date is mentioned in the book?

A Right.

Q Is that correct?

A That's correct.

Q So you are going by memory?

A Yes.

Q Do you recall what day the 19th of July was on, what day of the week?

A It would be on Friday night.

Q On a Friday night?

A Yes.

Q Now, these men came in and didn't say "This is a stickup" or anything like that, did they?

A No, sir; they were very polite customers.

Would you like me to clear up why I remember the 19th?

Q Well, they just came in and bought the weapons, didn't they?

A Yes.

Q And left?

A Yes.

Q And they didn't all come in together, did they?

A No. First one and then two.

Q Now, were you ever shown pictures?

A Yes, sir.

Q Did you identify the defendant from any pictures?

A Yes.

Q And when was this?

A This was, oh, quite a while after the sale, after the incident of the shooting, the police came around; they

were checking on gun purchases. We were called upstairs to --

Q Do you remember when this was?

A No.

Q You can't recall when it was?

A No.

Q How many pictures were you shown?

A (Witness indicates) Better than twenty.

Q Did you pick out the pictures of Mitchum and Smith?

A No, sir.

Q You couldn't identify those pictures?

A No, sir.

Q You have identified State's Exhibit 46 as having come from your store?

A Yes, sir.

Q What is it about that, that you can identify as coming from your store?

A Well, see, we had just gotten a few of these in, and this particular one -- of course, right now it is not shined up or anything -- but, compared to most rifles, it is a very, very deep-grained stock, plus it has what they call a burl up here in the stock. This is made from a knot that is inside the stock, that will cause it to have a darker grain.

Q Now, this particular weapon, this is how you identify it?

A This is how I identified that.

Q Now, whether or not there is another weapon or 5 or 6 or 10 weapons with this same kind of marking on it, you can't say?

A No.

Q So the only thing you can say it is similar to the one that you sold these three men?

A I wouldn't say it was similar, I would say that it was one that was sold that night.

Q Well, you are saying it is based on this imperfection in the stock?

A Right, I have never seen two grains alike.

Q You have never seen them?

A No.

Q Of course, you are not an expert on guns?

A No, sir.

MR. LAURIE: Objection.

THE COURT: Overruled.

MR. TOLLIVER: Are you?

MR. LAURIE: Objection.

THE COURT: Overruled.

MR. LAURIE: It is a conclusion.

THE COURT: He may answer as



to whether he is an expert or not.

MR. LAURIE: Sure.

THE COURT: You may answer.

THE WITNESS: No.

Q (By Mr. Tolliver) So, how many of these have you seen?

A Just those that came into our store, that's all.

Q How many would you say there were?

A Well, 6 or 8.

Q So this was the only one out of the 6 or 8 that you have seen since you worked at the store that had this particular imprint on it, is that right?

A Yes, out of all of them, yes, I have seen all the rifles; I saw all that came to the store.

Q I asked you how many that was and you said about 8.

A 6 or 8, yes.

Q Out of those 8, this is the oddest one, is that what you are saying?

A Yes.

Q Now, whether they have got the same kind of rifle with the same kind of stock in some other place, you couldn't say, could you?

A No, sir.

Q So that's why I said it looks similar to the one you sold?

A Right.

Q All right, now, the other rifle that has been identified as State's Exhibit 45, I believe you testified this was similar?

A Right.

Q You couldn't make any positive identification of it, either, is that right?

A Right.

Q Now, showing you what has been identified as State's Exhibit 48, did you positively identify these boxes as having come from your store?

A Yes.

Q Now, because of this label that is on it?

A Right.

Q Now, you had 8 guns, is that right, is that all you had in the store was 8?

A Of this type?

Q Of this type.

A 6 or 8 of them, yes.

Q 6 or 8 -- were all 8 of them sold?

A No, sir.

Q While you were there?

A No.

Q All right, were they sold after you left -- when did you leave?

A I worked a few more days part-time, and we picked up --

because I had moved, so by the time that I was there, I didn't see any more sales on them -- they weren't put back on the shelves to be sold.

Q Wait a minute, now, when was the last day you worked at Forest City?

A My termination date would be in November.

Q In November?

A Yes.

Q Of last year?

A Yes.

Q Are you saying at the time you left there, the other weapons were still there, hadn't been sold or do you know?

A I don't know. They went to our Brookpark store.

Q They went to your Brookpark store?

A Yes.

Q Now, these cartons that you have testified to, sir, did they only go with these weapons, or if you sold some other weapon, you would put a carton on it?

A A gun, this same size, you could put in here.

Q Now, can you say whether or not you sold other weapons this same size, you or somebody else?

A No, sir, I don't think we had anything else that short inside the store. Everything else we had was a single-action, longer in length.

Q Now, are you saying this positively or as best as you

can recall?

A Now positively I would not put a gun longer than here in here. Another salesman --

Q You can't say what somebody else might do?

A Right.

Q So you can't say positively that this box or this carton, I should say, and the other cartons that were shown to you were actually wrapped around those three guns, these?

A Not the three that you have -- right, as I stated, they are our cartons.

Q Now, showing you what has been identified as State's Exhibit --

A On the end.

Q -- Exhibits 42-B, 42-C and 42-A, did you identify any of these, sir, as positively coming from your store?

A Yes, sir, this one has our label.

Q This one here?

A Right.

Q The other two you could not?

A The labels are similar.

Q Now, when it came from your store you can't say?

A I can say it came at the same time the rifle boxes you showed me, because they have the same color label.

Q Well --

A They change colors and numbers at inventory.

Q How often do they change?

A This, I couldn't tell you; I have no idea.

Q Then, when was this particular inventory in your store?

A It would be in June, July and August, around in there.

Q How long did this inventory stay in your store?

A This, I can't say.

Q All right, so then you are saying this came from your store, but now exactly when it was sold, you can't say?

A No.

Q You can't say that you sold this, can you, this particular box?

A No.

Q You don't know who sold it?

A Right.

Q Now, you say Forest City has branches, do they not?

A Yes, sir.

Q Do the branches, can you say whether or not a branch of Forest City --

A I have never been to a branch; I don't know how they run, whether their color goes to a specific store or that specific inventory, because each store has its own inventories, own times and everything else.

Q So how many stores does Forest City have, if you know?

A At that time we had 4.

Q You had 4?

A Yes.

Q So you can't say now whether or not these cartons came from your particular branch of Forest City or another branch of Forest City?

A That is right.

Q Is that right?

A That is right.

Q Now, showing you again, sir, State's Exhibit 48, was this carton, to your individual store, or was it to a Forest City store?

A Again, it would be to a Forest City store.

Q So you can't say this particular carton came from your individual store, can you?

A No.

Q And that would hold true with the other two cartons, if I showed them to you, is that right?

A That is right.

Q Then, I take it, sir, showing you again State's Exhibit 45, that all four of the Forest City stores sell guns, is that correct?

A No, sir, they don't.

Q Just one?

A Two.

Q Oh, two sell them? I see, so how many guns were sold

by the other Forest City store, you don't know?

A No, sir.

Q Whether or not they have a gun with this particular peculiar stock on it, you don't know?

A No, sir.

Q In fact --

A This is not the one.

Q This is not the same one, I am sorry, I will get it. Oh, it's still over here. This is what I was referring to, State's Exhibit 46.

Now whether or not the other store -- where is that store located?

A Brookpark Road.

Q On Brookpark Road?

A Yes.

Q Whether the other store sold a weapon with this kind of marking on it, you don't know?

A No, sir.

Q So at the time you sold these three weapons or you and your other associates, you didn't put any particular markings on them or brands on them that you could identify them by, is that right?

A Right.

Q You are just going by general appearance, is that correct?

A Yes.

Q Now, you identified the defendant as the person you saw on the 19th of July?

A Yes, sir.

Q I think you testified that you didn't write any date in the book as to when these weapons were sold?

A Yes, the writing is mine.

Q Now, how did you identify him from a picture?

A You mean when the police came?

Q Yes.

A Yes, sir.

Q And you remember how he was dressed on the day that you say you saw him in July?

A He had a bright-colored shirt on, the neck was bare and the part that I had noticed from him -- he's about my height, from looking at him and the goatee; he wasn't wearing glasses at the time.

Q How tall are you?

A Six one and a half.

Q Six one, you say he was your height?

A Well, looking right at him, yes.

Q And when you looked at him, were you able to look him in the eye?

A No, just. I would just say I was looking right at him -- I couldn't tell you whether I was looking at his eyes.



Q What I am saying is, is he taller than you or shorter or the same height?

A I would say a little taller than I.

Q At the time you identified his photo, how many photos did you look at?

A I can only say over 20 or so because they handed me a large wad of small photos, and large ones, different size, group shots and everything.

Q But the other two men that came in, that you say you saw him with, you did not identify their pictures?

A No, I did not make an identification on them.

Q All right, now, was it suggested to you that this was the man whom you saw at the time you picked this picture out?

A No, sir.

Q You picked it out without any help?

A Yes, sir.

Q Were you told at that time who it was that you had selected?

A I picked them out and handed them over; then I was told.

Q Then you were told?

A Yes, sir.

Q Now, at the time that this transaction happened --

A Uh huh.

Q -- there was no threat or coercion of any kind, was there?

A No, sir.

Q It was a perfectly smooth transaction, was it not?

A Yes, sir.

Q Now, at the time that you talked to the police, you gave them certain information, did you not?

A By "information," what do you mean?

Q I mean, as to what had transpired on the night of the 19th?

A Yes, sir.

Q Did you at that time give them a written statement?

A At the store, no.

Q Well, at any time did you go to the police station and give them a written statement?

A Yes, sir.

Q -A You signed a statement?

A Yes, sir.

MR. TOLLIVER: We would like to have an inspection, sir.

THE COURT: The counsel will come back into chambers and the jury will be at ease, wherever you are, please.

(Thereupon a conference was held between the Court and counsel, in chambers, outside the hearing of the jury.)

---  
(Thereupon the following proceedings were held within the presence and hearing of the jury:)

THE COURT: Do you have anything further?

MR. TOLLIVER: We have nothing further.

THE COURT: Do you have any further questions?

MR. LAURIE: Yes, Judge.  
Can we take a moment out?

(Thereupon the following proceedings were held outside the hearing of the jury, but on the record:)

MR. CORRIGAN: Would you mark this as State's Exhibit Roman Numeral II.

(State's Exhibit Roman Numeral II was marked for identification.)

MR. CORRIGAN: Your Honor, we move that this document, Roman Numeral II, be admitted in the record intoto, but that the same not be presented to the jury.

MR. FLEMING: Objection.

THE COURT: That may be done.

- - -

# STATE'S EXHIBIT ROMAN NUMERAL II:

"Criminal Investigation Bureau. July 29, 1968. Time 1:55 p.m.

"The following is a statement of Dennis C. Ranc, white, age 26, married, residing at 6835 Richmond Road, number 91 lot, 439-1462, regarding

the arrest of Fred Ahmed Evans on the charge of murder of a police officer.

"DENNIS C. RANC: I work part time at Forest City Material Company, located at 436 Northfield Road, Bedford Heights, Ohio, phone 475-7000. My regular place of employment is Atlas Lederer Co., located at 9515 Woodland Road, where I am a truck dispatcher.

"It was on Friday night, July 19, 1968, I was working the evening shift from 5:30 p.m. to 9:30 p.m., in the sporting goods department. About 7:30 p.m., or 8:00 p.m., a colored male came in and asked to look at what we had in our rifles. The first fellow just looked, the one that asked to look at the guns, and then he made a purchase of a gun. I do not know the salesman that made the sale to this male.

"Shortly after he left, two other males, colored, came to the counter and asked to see the carbines. I showed him the guns and upon his looking at the guns he voiced his surprise that they weren't .30-caliber weapons. The other man with him also asked the other clerk to look at a carbine also. They were there looking at them a good ten minutes, and they asked about the clips, how many

shots it held and if we had the ammunition for them. They were also surprised at the low price on them, as they were \$39.88 or so. The male with the goatee purchased one carbine .22-caliber. When he said he would take it, I went beneath the counter to get the empty carton, and at this time the other male said he would take his gun, too. So I picked up two empty cartons and then I took this male name off of his driver's license, it was 'Fred Allen Evans', and I printed his name in the book and made him sign it down at the bottom. He signed 'Fred A. Evans,' the way it was on his driver's license. Evans also purchased one carton of 22 long-rifle ammunition containing 500 rounds. He paid cash for this in tens and twenties.

"Another male that was with him gave his name as Ralph Richard Smith, of 12312 Auburndale Road, he purchased a Marlin .22-caliber and 200 rounds of ammunition. After making the purchase, they left the store. I went to the front door of the store to talk to the duty manager in front of the store and to notify him of the three recent sales of carbines, and the sale of ammunition. At this time I noticed the first male who had purchased a carbine was sitting in a parked car in the lot and

he was joined by the males, who gave their names as Evans and Smith. I do not know what make the car was.

"Question: Showing you ledger record book number 1020R, what can you tell us about this book?

"Answer: That's our gun record book, all purchases of guns have to be listed in there./ The (Question:) page with the black X circled with red and the name of Fred Allen Evans, 11105 Superior, Cleveland 44108, Marlin 22 carbine clip action, signed 'Fred A. Evans,' on the top of this page a circle 'A' with the initials 'HS,' what can you tell us about this?

"Answer: That is the entry I had made which he signed 'Fred A. Evans' for a 22 caliber carbine.

"Question: Showing you a similar page in the book with a circle 'B' with the initials 'HS' and the names of Ralph Richard Smith, 12312 Auburndale Road, Cleveland, Ohio 44108, Marlin 22 caliber carbine, signed 'Ralph Smith' and also the name of James Mitchum, 11804 Ablewhite Road, Cleveland 44108, Marlin 22 caliber Carbine, signed 'James Mitchum,' what can you tell us about this page?

"Answer: Smith is the fellow that was with Evans at the time of the purchase. Mitchum was the first man in the store. These three men all bought carbines at the same date.

"Question: Showing you a CPD photo number 126677 with no name on the back, what can you tell us about this?

"Answer: This is the gentleman I identify as purchasing a carbine from me. The police tell me his name is Fred Evans, and he signed his name 'Fred Evans' in the ledger book.

"Question: Showing you a stand-up photo number 126677, what can you tell us about this?

"Answer: That's the same man that bought a gun that I know of as Evans.

"Question: Showing you a total of 27 police department photographs, all of colored males, can you identify any of these males as making a purchase of guns from your store?

"Answer: I'm not sure of any of them.

"Question: Did any of these three men have a goatee?

"Answer: Just the one, Evans. I would recognize him anyways because of the way his hairline meets the forehead.



"Question: Did any of them have a mustache or outstanding features?

"Answer: I can't say. But the one had a awful smooth face and we checked his ID, he used his Selective Service card as ID.

"Question: Is there anything else that you can tell us about this?

"Answer: No, that's about it. After this sale, I reported it to the duty manager, and he told me not to sell any more, and the next morning they were taken from the shelves and put in the back.

"Question: Have you read the above and is it true?

"Answer: Yes.

"Signed: Dennis C. Ranc.

"Witness: Harry Sargent 1368 D.B.

"Detective Bayse, Time 2:37 p.m."

- - -

(Thereupon the following proceedings were had within the presence of the jury:)

THE COURT: Mr. Laurie has some more questions.

- - -

REDIRECT EXAMINATIONBY MR. LAURIE:

Q Mr. Ranc,

A Yes, sir,

Q When these three guns left the store, these three Marlins, did they leave in cartons?

A Yes, sir.

Q And if I understand you, you said, on cross-examination, that the color of your store's tags at that time was the same as appearing on these cartons, in both the cartons and the bullet boxes I showed you?

A Yes, sir.

Q If I recall, you said on cross-examination that you feel that those colors were in existence in your store in the month of June, July, and August of 1968?

A Yes, sir.

Q Mr. Tolliver asked you if there was anything unusual about this sale, and you said yes.

Am I right, sir?

A Yes.

Q Tell the jury what was unusual about this sale?

MR. FLEMING:

Objection.

MR. TOLLIVER:

Objection.

THE COURT:

Overruled.

THE WITNESS:

May I answer?

THE COURT:

Yes.

A Normally, on selling guns --

MR. FLEMING:

Objection.

THE COURT:

You are answering

his question: Is there something unusual about

this sale? That was the question: Is there some-

thing unusual? ~~And~~ And you said there was. You

answered the question.

Now, what was unusual?

THE WITNESS:

The large amount

of ammunition, plus they had inquired if we had more.

We said no. And this being the third sale of the

same evening on this same type of gun, wanting large

quantities of ammunition, this, to me, was

peculiar.

MR. FLEMING:

Objection.

THE COURT:

I take it you are

saying it was unusual?

THE WITNESS:

Or unusual, yes.

THE COURT:

Objection overruled.

MR. FLEMING:

We request that the

jury be instructed to disregard this as being a

"peculiar sale"; there is nothing peculiar about it.

THE COURT:

He substituted the

word "unusual" for the word "peculiar."

The motion is overruled.

Q (By Mr. Laurie) You were asked on cross-examination why you recalled the 19th, as mentioned by you, from memory.

Now, you also indicated you had some explanation for that. Do you, sir?

A Yes, sir.

Q What is it?

MR. FLEMING: Objection.

THE COURT: Overruled.

MR. LAURIE: Proceed.

A The reason for the 19th was -- I remember because we -- I went to the duty manager and mentioned about the sales of the guns and everything, to have to pull the sales-- or the guns off the racks and the ammunition off the shelves, and we, of course, notify our department manager in sporting goods what we had done and why.

And then, a few days later, there was this --

MR. FLEMING: Objection.

THE COURT: Yes. Just confine

it to the 19th. You told us something -- I don't know whether you had completed the answer.

Q (By Mr. Laurie) Did you hear about the July 23rd riot, sir?

MR. FLEMING: Objection, your Honor.

MR. TOLLIVER: Objection.

MR. LAURIE: Yes or no.

MR. FLEMING: Objection.

THE COURT: Overruled.

Q (By Mr. Laurie) Did you, sir?

A Yes, sir.

Q How many days before was it that these guns were purchased, if you know?

MR. TOLLIVER: Objection.

THE COURT: Overruled.

Q How many days?

A Just a few.

Q And is this one of the reasons why you remember the 19th?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: Objection sustained.

MR. LAURIE: That's all.

Thank you, Mr. Ranc.

RE CROSS-EXAMINATION

BY MR. TOLLIVER:

Q Just a couple of questions.

A Yes, sir.

Q As I understand it, how many guns had you sold since you have been there?

A I couldn't tell you, sir.

Q A lot of them?

A Quite a few.

Q Quite a few?

A Yes.

Q How much ammunition have you sold since you have been there?

A A large quantify of this.

Q All right, so are you saying, then, that these 3 men, these 3 men bought more ammunition than you had ever sold before?

A Yes, sir, I mean to one particular individual.

Q Well, there were 3, I think you said?

A Yes, sir.

Q So the 3 of them bought a lot of ammunition, is that right?

A Yes, sir.

Q All right, is that unusual for 3 people to buy a lot of ammunition?

A To me, it struck me, like I says, unusual.

Q Well, there was nothing illegal about it, was there?

A No, sir,

Q They paid cash money for it, didn't they?

A Yes, sir.

Q And there was no threat or anything of that kind, was there?

A No, sir.

MR. LAURIE: Objection, repetitious.

MR. TOLLIVER: And they treated you  
courteously?

MR. LAURIE: Objection.

THE COURT: Overruled.

Q (By Mr. Tolliver) They treated you courteously,  
didn't they?

A Yes, sir.

Q So other than the fact that it was -- how many boxes  
were there -- three boxes?

A We sold one carton and four boxes, and then the first  
gentleman, he bought several rounds. This one, I do not  
know how many.

Q When you say several rounds, what do you mean?

A Better than a hundred rounds.

Q When you say a hundred rounds, how many rounds in a  
box?

A Two boxes.

Q So, two boxes?

A Yes.

Q 50 rounds in a box?

A Yes.

Q So two boxes of ammunition is not unusual, is it?

A No, sir.

Q And how many did the defendant buy?

A 500.

Q So he bought how many --

A 10 little boxes, one carton, one carton is 500.

Q So he bought a carton?

A Yes.

Q So people have bought cartons there before?

A No, sir, usually they buy them by little, individual boxes.

Q I am sorry?

A They buy one or two, maybe once in a while we will have one that will buy three or four boxes, when they are on sale.

Q So you can't say that some other salesman hadn't sold somebody a carton?

A No, sir.

MR. LAURIE:

Objection.

THE COURT:

Overruled.



Q (By Mr. Tolliver) Can you?

A No, sir.

Q You don't record in your book how many cartons of ammunition people buy, do you?

A No, sir.

Q So then, people can come in and buy ammunition without buying the gun, can't they?

A Yes, sir.

Q All right, so you can't ever say that nobody else had ever come in there and bought a carton of ammunition, can you?

A No, sir.

Q Yet you thought this was unusual?

A Yes, sir.

Q Now, the other man bought how many?

A That was with Mr. Evans?

Q Yes.

A 200.

Q So he bought two boxes?

A Yes.

Q That wasn't unusual, was it?

A No.

Q So this was --

A This was all that we would put out; we gave the first one the carton, and when the other one asked, all we put out

was 200 rounds, and this was all that we said we had; we had more .22 ammunition, but we wouldn't sell it.

Q Is there some law against selling more of it?

A No, sir.

Q You can sell as much as you can stock, can't you, if people come in and buy it?

A Yes, sir.

Q That is what you're in business for, isn't it?

A Right.

Q In fact, it would be peculiar if you didn't sell any, wouldn't it?

A Right.

MR. TOLLIVER: That's all.

REDIRECT EXAMINATION

BY MR. LAURIE:

Q It is not unusual to sell less, too, is it?

MR. FLEMING: Objection.

MR. TOLLIVER: It is argumentative.

THE COURT: Overruled.

THE WITNESS: No.

MR. LAURIE: What was argumentative?

about it?

THE COURT: Do you have any

other questions?

MR. LAURIE: That's all I have,  
your Honor.

THE COURT: You are excused.  
(Witness excused.)

MR. LAURIE: Mr. Talley.

THE COURT: Is the gentleman  
you have called before, Mr. Laurie?

MR. LAURIE: He is here, Judge.

THE COURT: He is?

MR. LAURIE: Yes, sir, I have just  
seen him a few minutes ago; he probably has to work  
his way upstairs.

THE COURT: The elevators are  
running, I think.

MR. LAURIE: Well, I don't know,  
Judge.

- - -

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness WILLIAM TALLEY, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q Sir, will you state your full name and spell your last name for the record, sir?

A William Talley, T-a-l-l-e-y..

Q Where do you work?

A I'm a teacher at John D. Rockefeller.

Q That's located where?

A 5901 Whittier.

Q Whittier?

A Avenue, yes, sir.

THE COURT: Whittier?

THE WITNESS: Whittier, W-h-i-t-t-i-e-r.

Q (By Mr. Laurie) I see, Cleveland, Ohio?

A Yes.

Q Try to keep your voice up loud, so we can all hear you, Mr. Talley, and tell us this: Your regular profession is teaching?

A Yes.

Q Directing your attention to July of last year, did

you have any other employment during that month, sir?

A Yes, I was employed as a salesman at Sears Roebuck Company.

Q I see, and you have been subpoenaed here as a witness by the State, sir?

A Yes, sir.

Q To bring certain records with you, too?

A That's correct.

Q And you have been here also this morning, weren't you, sir?

A Yes.

Q What type of work did you do at Sears Roebuck?

A I was a salesman in the Sporting Division.

Q Which -- I don't think I asked you, which store was this?

A The store on Carnegie.

Q And the Sales Division?

A In the Sporting Division.

Q The Sporting Division, were you a salesman in that division?

A Yes.

Q Can you briefly tell the Court what were your duties there?

A Sell merchandise that was on display there.

Q What type of merchandise is in the Sporting Goods

Division, generally?

A Baseball equipment, fishing equipment, guns and ammo, just anything in the line of sports and what have you.

Q Tell me, sir, during your employment there that month, or more particularly calling your attention to July 17, 1968, did there come a time on that day that you saw one Fred Ahmed Evans?

A Yes.

Q About what time of day or afternoon or evening was it?

A I don't remember the exact time, but it was pretty close to closing time; this should have been somewhere in the neighborhood of 9 o'clock, p.m.

Q I see, and had you seen or known about this man before?

A Yes, from the newspaper.

Q Then, you recognized him when he came in, sir?

A Yes, I did.

Q Did he come in alone or with others?

A There were others with him.

Q How many others?

A I don't know the exact number.

Q Well, as best you can recall?

A Well, at least 4; I don't remember the --

Q Do you recall what age bracket they appeared to be?

A No, I didn't pay too much attention to that.

Q Were they young men as opposed to old men?

A I am not sure about that anymore.

Q I see. They were all males?

A I think so, yes.

Q All right, and now, when you first saw Mr. Evans, was he in the Sporting Goods Department?

A Yes, he was.

Q Did you have some contact, business-wise, with him then? With him or his friends that he came in with?

A Only with him.

Q All right, tell the Court exactly what transpired between you and Mr. Evans?

A Well, he came in, and of course, by the way, he indicated to me that he was interested in buying some type of rifle; and of course, I am beginning to show him what we have on display; and of course, I don't remember exactly all of the different types that I showed him, but he did settle for a .22 rifle, and this was one that was purchased that same afternoon by him.

Q By Mr. Evans?

A Yes.

Q A .22 rifle?

A Yes.

Q Incidentally, before we go further, is Mr. Evans in the court room this afternoon, the man that you sold the rifle to?

Q Identify him to the Court and jury.

A The man with the red dashiki on.

MR. LAURIE: May the record show  
he has identified the defendant, your Honor?

THE COURT: It may so show.

THE COURT: How was he dressed  
that particular night, sir?

A I don't remember.

Q Besides buying a .22 rifle, did he purchase anything  
else from you?

A Yes, he purchased three boxes of .22 cartridges.

Q Three boxes of .22 cartridges?

A Yes, sir.

Q For the rifle?

A Yes.

Q How many is in a box, do you recall?

A I think it is 50.

Q 50, would be 150 rounds?

A Yes.

Q And what, if anything, did his other friends buy  
while they were there?

A Well, I don't remember them buying anything, but I  
am pretty sure they did buy something; I don't know exactly  
what it was, other than other things can be picked up and  
taken to the counter, and no doubt some other salesman



took care of that., when it came up. I am sure there was more in the group that bought more than just the rifle, but I was working with Mr. Evans at the time, and the only thing I was dealing with was the rifle and the cartridges that goes along with that particular rifle.

Q Did you see the group buy anything in particular to the best of your knowledge?

A No, I don't recollect.

Q Pardon?

A I don't recollect exactly what it was they were buying.

Q But they brought something to the counter?

A I believe so.

Q Was this from the -- what portion of the department from where you and Mr. Evans were in?

A Yes, it was from the same place.

Q The gun and weapons department?

A Yes.

Q And the ammo department?

A Yes, the ammo is there.

Q Tell us whether or not, did the others that came in with him carry packages out with them, too?

A I don't remember them actually carrying anything out. You have to -- it was rather late, and of course, this is why I had help on the counter, at one point, so as to whether they actually, the others carried anything out, I couldn't say for sure.

The only thing I was doing at this time was trying to do all of the paper work on the rifle that I was selling Mr. Evans.

Q Explain before that -- Mr. Evans say anything or talk to you about anything other than the buying of the rifle? and the ammo?

A No, he didn't.

Q Explain to the Court how you consummated this sale, the procedures used?

A Well, usually --

Q Not usually, what you did that night.

A Well, when I showed him the weapon, and he made the decision that he was going to buy this particular weapon, why usually -- I don't remember exactly what happened -- I don't know whether we had one of this type weapon in a box in the storeroom or I took it from the rack, but in either case, we usually put the weapon, even if we take it from the rack, we found the box that it came out of and usually place it back in the box; the procedure would be to write up all weapons that are sold, and of course you take the model number off the box, and you record this on the sales slip and the price, and what have you, and of course all of this -- I made out a sales slip to this effect.

And then, once this is done, then of course you get positive identification. This is one of the first things you have to do. Then once this is done, then of course you record that information in this firearms book that Sears

keeps, and of course you put the information in it, referring to the make of the rifle, its number, and also the buyer's address and his name and how it was disposed of, whether cash or easy payment or any way, in other words, however he disposed of it, paid for the particular weapon. This is the procedure for selling a weapon.

Q I take it you did make a slip out, plus the fact that some recordation was made of this particular sale in the book?

A Yes.

Q Did you bring those papers with you?

A Yes.

THE COURT: Folks, we will take a recess at this time, in the meantime the exhibits will be marked, and when you are out of the court room, don't talk to anybody and don't let anybody talk to you about this matter.

(A short recess taken.)

(State's Exhibits 51, 51-A and 52 were marked for identification during the recess, at the request of Mr. Laurie.)

- - -

THE COURT:  
were marked there?

Some exhibits

MR. LAURIE: Judge, we marked  
State's Exhibits 51, 51-A, and 52.

Q (By Mr. Laurie) Handing you what has been marked  
for the purpose of identification, State's Exhibits 51 and  
51-A, Mr. Talley, can you describe to the jury what they  
are?

First you had better take 51, this book (indicating),  
it is State's Exhibit 51, and then tell the jury what it is  
and describe it to us.

A Well, this is the book that we put the report, the  
information pertaining to the rifle or weapon that is being  
sold. We usually record all of that information in this  
particular book here (indicating).

And of course, we list the serial number, the type  
of the weapon. In this case it happens to be a slide type,  
the caliber or gauge, it's a .22, and then, of course,  
there is another column here (indicating) for the name of  
the person who is buying the weapon. There is a place  
for the date.

This is recorded here (indicating), his address and  
how we dispose of this particular sale, whether it was cash  
or will call, which is layaway. In this particular case  
it was paid for by cash.

Q Now, you are referring to State's Exhibit 51 in that testimony and you are looking at page 74?

A Right.

Q And the sale was made on what date, as appears on this ledger book?

A The date of the sale was the 7th -- 17th.

Q Who made the purchase?

A Fred Evans.

Q And the address?

A This is 11105, I guess this is "Superior" here (indicating).

Q And the date, again? 7-17?

A 7-17.

Q Was it a cash sale?

A It was a cash sale.

Q Did that reflect the sale that you said you made to Mr. Evans?

A Yes, it does.

Q Now, handing you what has been marked as State's Exhibit 51-A, can you tell us what this is?

A Well, apparently this is a copy of this particular page here (indicating).

Q Of 74 in the ledger?

A Yes.

Q Photostatic copy, identical, of that page and that

transaction?

A Yes, sir, it is.

Q All right. And handing you what has been marked as State's Exhibit 52, can you tell the Court and jury what this is?

A This is a sales slip and, of course, when you sell a rifle, you have to report the information on a sales slip; in other words, whether it's paid for by cash or what, you have to make out a sales slip for it, and this is what this is here (indicating).

Q And this is a sales slip of the sale to Fred Evans on the 17th of July of last year, is that right?

A That's correct, yes.

Q And a 22 rifle appears on this statement of sale?

A Yes, sir, it does.

Q Show three boxes of cartridges, 270; is that the additional purchase he made?

A That's correct.

Q And is this the total price of sale (indicating), \$60.01?

A Yes, it is.

Q And the three boxes were 22 rifle cartridges?

A Yes.

Q Bullets or what?

A Yes.

Q And where did you get the information to put in the ledger book the address of Mr. Evans?

A Well, apparently this came from the identification that was shown us.

Q He showed you his identification to get this from --

A Yes.

Q All right. And when you made this sale, tell us how did that leave the store? Without being wrapped?

Or, how did it leave the store after this sale was consummated?

A Well, I would say that it left in a box.

MR. FLEMING:

Objection.

THE COURT:

What is your best

recollection of how it was?

A Yes, it probably left in a box, because this is the usual procedure.

(State's Exhibit No. 53 was marked for identification.)

Q Showing you what has been marked as State's Exhibit 53, can you identify this exhibit and tell the Court what it is?

A Well, this is a box that a .22-caliber rifle comes in when it is shipped into the store.

Q Was this rifle put in this box when it was sold?

A Yes.



Q Now, you made some observations, and is it correct that it has the same -- what is this word "manufacturing serial number"?

A Yes.

Q And in the book it shows it being 49213, the entry, and on this box do we see "49213" (indicating)?

A Yes.

Q All right, and that corresponds then with the serial number -- manufacturer serial number that you have listed in your ledger book, reflecting the 22 gun you sold Mr. Evans, is that correct?

A Yes, right.

(State's Exhibit No. 54-A, 54-B, 54-C, were marked for identification.)

Q Handing you what has been marked as State's Exhibit 54-A, -B, -C, can you examine this exhibit and tell us, if you can, identify same?

A This is the -- we do sell --

MR. FLEMING:

I can't hear.

A At Sears and Roebuck, they do sell this type of ammunition here. This is 16-gauge extra range, and Sears do sell that type of ammunition.

Q You did say that you saw some of the other boys make some purchases at the same time?

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Sustained.

Q Did the other boys that came with Mr. Ahmed Evans make some purchases at the same time?

A Yes, sir.

MR. TOLLIVER: Objection.

THE COURT: Sustained.

Did you say you saw the other boys make some purchases in that department? Is that what you are testifying?

THE WITNESS: Yes, Like I said before, I am sure that some other purchases were being made, but I wasn't aware of what they were because someone else --

Q But you saw some purchases made in your department by the other men?

A Yes, that's right.

MR. FLEMING: Objection.

MR. TOLLIVER: Objection.

THE COURT: Proceed.

He went into it before in quite a lot of detail as to what he thought transpired.

If there is another question, proceed to it.

Q What were the other boys doing in this department,

that came in with Mr. Evans?

MR. FLEMING:

Objection.

THE COURT:

He can answer it,

as to what he saw.

MR. FLEMING:

He just said --

A I was on one of the counters and working with Mr. Evans.

What the other was doing, I guess they was just browsing around. I stated earlier that, as far as I can recollect, there was some other purchases made, but I don't know exactly what they were.

MR. LAURIE:

All right.

Thank you. That's all I have of this witness, Judge.

Do you want to substitute --

I can do it later.

THE COURT:

Do you want to

substitute a photostat for that book?

MR. LAURIE:

That's right, Judge.

I'd appreciate it if I can.

CROSS-EXAMINATIONBY MR. FLEMING:

MR. FLEMING: If it please the Court.

Q Just one or two questions, Mr. Talley. I believe you indicated in your testimony that this is ordinarily the box that that rifle would have come in (indicating), but that you weren't aware of whether or not it left Sears at that time or not, is that a fact?

A Well, ordinarily, we do put a weapon, you know, in a box and usually we try to find the box that bears the same serial number that the weapon carried.

Q Do you recall of your own knowledge as to whether or not this box left Sears that night?

A Well, I couldn't say whether it left Sears that night or not.

Q Or that you put the weapon in?

A I wouldn't want to say I put it in this box, however --

Q You put it in a box?

A I put it in a box.

Q Now, are you absolutely certain that the person you have identified as having purchased this weapon was the defendant?

A Yes, I am.

Q Now, when did it first come to your attention that

the police wanted more information about this?

A I don't remember the date, but that was a couple of police officers that came to the store and, of course, they indicated at the time that they wanted me to come downtown someplace to give a statement.

Because I told them that I was on duty then, so the statement was taken at Sears and Roebuck.

Q A statement was taken at Sears and Roebuck?

A At Sears and Roebuck.

Q Do you recall who took the statement?

A I really don't know.

Q All right. Were any pictures shown to you?

A Yes.

Q To identify --

A Yes.

Q And about how many were there shown to you?

A I would say at least 8. I couldn't be sure about the exact number, but several pictures that I had to look at.

Q About 8 altogether?

A I would say about that.

Q Were you able to identify any of these photographs as persons who were present in the store at the time this rifle was purchased?

A Only one.

Q And that was the defendant?

A That's correct.

MR. FLEMING: Nothing further,  
your Honor.

THE COURT: Anything further,  
counsel?

MR. LAURIE: Thank you. That's  
all, Mr. Talley.

Oh, before he leaves, Judge, may I substitute  
51-A in place of 51, so the gentleman can give  
this back to Sears?

MR. FLEMING: No objection.

MR. TOLLIVER: No objection.

(State's Exhibit 51 was  
withdrawn.)

(Witness excused.)

MR. LAURIE: The State will call  
Mr. Heinberger.

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness ROGER C. HEINBERGER, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q State your full name and please spell your last name for the record.

A Roger C. Heinberger, H-e-i-n-b-e-r-g-e-r.

Q What is your business or occupation?

A Security officer.

Q For who?

A Higbee Company.

Q How long have you been so employed?

A 6 years.

MR. FLEMING:

What company?

THE COURT:

Security officer

for the Higbee Company. He is employed for six years.

Q Generally, what are your duties, Mr. Heinberger?

A Well, actually, patrolling the store, seeing what things need to be taken care of on the floor, mostly the main floor, basement floor, just general security work.

Q Thank you. Calling your attention to the date of

July the 23rd, 1968, the early hours -- well, not the early hours, the morning of that day, were you working?

A Yes, sir.

Q And calling your attention to the name of a Fred Ahmed Evans, have you come across that particular man's name in your work?

A Well, I had heard of it, yes, sir.

Q When did you first come across this man in your store, if, indeed, you did?

MR. FLEMING: Objection.

THE COURT: Did you come across Mr. Evans in your store at some time?

THE WITNESS: On the morning of --

THE COURT: You did?

THE WITNESS: Yes, sir.

Q When was this, sir?

A On the morning of July 23, 1968.

Q This Mr. Fred Evans that came to your attention in your store on the morning of July 23, 1968, is he in the court room this afternoon?

A Yes, sir.

Q Will you point him out to us, sir?

A The gentleman with the red trimming.

MR. LAURIE: May the record show

he is identifying the defendant as being in the



store on the 23rd, your Honor?

THE COURT:

It may so show.

Q What time of the morning did Mr. Evans come in?

A Somewhere between 11:15 and 11:30.

Q Was he alone or with others?

A There were three others.

Q Were they colored gentlemen or white people?

A They were all Negro gentlemen.

Q How was Mr. Evans dressed, to the best of your recollection, that particular day?

A As I recall they were all dressed in black, dark blue T-shirt type shirt, black pants.

Q Where did you first see Mr. Evans and the others as they came in your store?

A This was at the south Ontario doors on the main floor.

Q All right. Go ahead.

A And they went immediately to a U-Ask-It box.

Q U-Ask-It box?

A Yes.

Q Did somebody use the U-Ask-It box?

A Yes, and I heard them say, "Where is sporting".

MR. FLEMING:

Objection.

MR. TOLLIVER:

Objection.

THE COURT:

Was Mr. Evans -- was he one of these that said whatever you heard said?

A He was with the group. They were all grouped around this box.

THE COURT:

Overruled.

Q What did you hear them say?

A Asked where sporting goods were.

MR. FLEMING:

I can't hear.

THE WITNESS:

He asked where

sporting goods were.

Q After hearing this, what did you do or observe?

A Well, I saw these gentlemen go up what we call the old escalator and, apparently, they proceeded to the fifth floor because I then went over and went up the new escalator and found them on the fifth floor, which is where sporting goods is located.

Q When you say where sporting goods is located, what type of merchandise do we find at Higbee's in the sporting goods department, generally, without listing all of them?

A Ski material, bowling material, basketballs, badminton games, rifles, bows and arrows, knives.

Q Ammunition?

A Ammo, yes.

Q All right. And then tell us, did you observe them going to the -- where in this department did you observe them go to then?

A When I got in the department, they were at the gun --

what we would say the department of the gun.

Q All right. And was Mr. Evans there with his friends then?

A Yes.

Q And did you hear Mr. Evans and/or his friends say anything at this department?

A Not particularly.

Q What do you mean by that?

A Well, I was quite a ways back.

MR. FLEMING: Objection.

THE COURT: Objection overruled.

Q Go ahead, sir.

A I was quite a ways back. I couldn't hear the conversation. All I could see --

Q Tell us what you saw then.

A But I saw them grouped around a white male who was showing them a rifle and explaining the workings of it.

Q Do you recall what kind of a rifle?

A As I understand, it was a Mauser action .65 caliber.

Q Mauser size .65?

A Yes, sir.

Q And did you get any closer then after you made this observation?

A No, sir.

Q What else did you observe they were doing there?

A Well, after this while gentleman got through explaining this gun, the gun was handed back to the gentleman that was waiting on them and it was put back into the rack.

Q All right. Then what happened to Mr. Evans and his friends?

A They departed.

Q All right, and did they purchase anything while you were there?

A No, sir.

Q All right. And this was on July the 23rd, about what time in the morning?

A Between 11:15 and 11:30.

Q Could you describe any of the other gentlemen that were with him at all, sir?

A No, sir. The only thing I could say was they were much shorter.

Q I see. And did there come a time when you talked to the police about this?

A Later that afternoon the police come into the store and wanted to know if we had seen this gentleman.

Q And on what date was that, that the police came?

A July 23rd.

Q At what time of day or night was this?

A This was later in the afternoon, 2:30 - 3:30.

Q And did you at any other time talk to the police again, then?

A I asked -- was asked to come down and view some pictures.

Q When was this?

A The following morning, which would have been the 24th.

Q And did you go to the police station?

A Yes, sir.

MR. LAURIE:

That is all I have.

CROSS-EXAMINATION

BY MR. TOLLIVER:

Q Mr. Heinberger, I believe you testified that all these persons did was to come in, ask where the sporting goods was, proceed to the sporting goods and talk to a salesman, whom you described as a white man, about a weapon; is that right?

A This is true.

Q And then they left?

A Then they left, yes, sir.

Q That is all that they did?

A That is all.

Q And of course, being a security guard, it is your duty to protect the security of the store?

A This is true.

Q To arrest people who are trying to steal something or trying to take something, is that right?

A This is true -- I mean, you make observations.

Q In order to protect the store and the store property?

A Right.

Q You had no occasion at the particular time to even have conversation with the people, did you?

A I had no conversation with them.

Q Because they hadn't done anything illegal, in your view, had they?

A Nothing. Nothing in my vision, no, sir.

Q They just came in, had a conversation with the salesman, and then they left; is that right?

A That's right.

Q And then later you say, that same afternoon, approximately three or four hours later, the police came in?

A Right.

Q And asked you what he had been doing in there?

A Well, they didn't particularly ask me. They went to the head security man, and then I was called.

Q Then you were called in?

A Right.

Q All you could do was just relate that he had come in and talked to somebody, had a gun demonstrated to him, and then he left?

A This is true.

Q And that is all he did?

A That is right.

MR. TOLLIVER:

That is all.

MR. LAURIE:

Thank you,

Mr. Heinberger.

(Witness excused.)

- - -

MR. LAURIE:

Mr. Borsellino.

THE COURT:

Pardon me --

-- was there something?

JUROR NO. 3:

Yes.

THE COURT:

Jim will see what

you want.

Gentlemen, come up so there is no secrecy.

(Thereupon a discussion was had between the Court and counsel, outside the hearing of the jury, and off the record.)

- - -



THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness SALVATORE BORSSELLINO, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q State your full name and spell your last name, sir.

A Salvatore Borsellino, B-o-r-s-e-l-l-i-n-o.

Q Mr. Borsellino, what is your occupation or business, sir?

A I manage the Atlantic Gun and Tackle Distributing Company.

Q Where is this? Where is your place of business?

A 420 Northfield Road.

Q Is this in Bedford Heights?

A Bedford, Ohio.

Q Bedford, Ohio?

A Right.

Q What type of business is this that you are in?

A Sporting goods.

Q Selling what type of merchandise, generally?

A Generally, hunting, fishing, camping, golfing,

tennis, et cetera,

Q Do you sell a gun now and then, too?

A Yes, sir.

Q How about ammo?

A Yes, sir.

Q All right. And directing your attention to the name of Fred Evans, did you come across that name, sir?

A Yes, sir.

Q When was this that you came across that particular name?

A In July of '68.

Q What month and what day, sir?

A Seventh month fourteenth day, '68.

Q And did you bring some invoices pursuant to a subpoena, sir?

A Registration, sir.

Q May I have them?

(Documents handed to counsel.)

(State's Exhibits  
Nos. 55 and 56 were  
marked for  
identification.)

Q (By Mr. Laurie) Handing you what has been marked for the purpose of identification as State's Exhibit 55, and 56, can you identify those, sir?

A Yes, sir.

Q What are they?

A They are registrations for purchases of firearms.

Q Would you take one at a time and describe what each -- or, for example, take them numerically, 55 first, this one here (indicating).

A All right. This is a Winchester model 190, serial number 606272, .22-caliber rifle, received by us on 12, 2nd, '67. Received from General Wholesale, sold on July the 11th, '68, to Ralph R. Smith, 12312 Auburndale Avenue, Cleveland, Ohio.

MR. TOLLIVER: Objection to this.

THE WITNESS: Sir, I didn't hear that?

THE COURT: Objection sustained.

Q (By Mr. Laurie) Wait a while, there's an objection and it's been sustained. I will rephrase the question.

What is State's Exhibit --

MR. FLEMING: I can't hear you.

THE COURT: He said he will rephrase the question.

Q What is State's Exhibit 55, generally?

THE COURT: He said 55 and 56 are registrations for firearms.

THE WITNESS: Right.

Q And what type of firearms does that reflect that was sold?

MR. FLEMING:

Objection.

THE COURT:

I assume the

objection is made possibly not related to Mr. Evans.  
Is he going to relate Mr. Evans to one or the other?

MR. LAURIE:

He is going to  
relate Mr. Evans with one or the other, yes.

THE COURT:

Proceed with the  
one that you are going to relate to Mr. Evans.

MR. LAURIE:

Both of them are  
related to him.

MR. FLEMING:

Objection.

THE COURT:

Put your question  
now, Mr. Laurie.

Q (By Mr. Laurie) Who was that gun sold to?

A Ralph R. Smith.

Q On what day?

A On the 11th -- seventh month eleventh day of '68.

Q And who made that sale?

A I did.

Q And may we have the name of that weapon again?

A That is a Winchester.

MR. FLEMING:

Objection.

May we approach the bench, Judge?

(Thereupon a discussion was had between the  
Court and counsel, outside the hearing of the jury,

and off the record.)

Q (By Mr. Laurie) Did you sell a gun to a Mr. Ralph R. Smith on the date of 7-11-68?

A Yes, sir.

(State's Exhibit No. 57 was marked for identification.)

Q Handing you what has been marked for the purpose of identification as State's Exhibit No. 57, will you look at that particular exhibit and examine it?

(Witness complies.)

Q And also examine State's Exhibit 55 and tell us what if anything -- tell us what if anything you know about that particular weapon?

A This is a model 190 Winchester, which we received on the twelfth month of 1967, on the second day, .22 caliber --

MR. FLEMING:

I can't hear.

THE COURT:

He said: This is

a model 190 Winchester that they received on the twelfth month of '67.

THE WITNESS:

Right.

A (Continuing) Was sold on the 7-11-68 to a Ralph R. Smith.

Q Do the serial numbers correspond --

A Yes, sir.

Q -- With State's Exhibit 55?

A Correct.

Q What are these items attached to this exhibit, if you know (indicating)?

A This is a standard Winchester warranty slip (indicating). This is a warranty card from Winchester.

Q These are blank warranty cards and warranty slips, is that it?

A Right, sir.

Q Now, if you will look at State's Exhibit 56, tell us if you can identify that particular exhibit?

A This is a model 190 Winchester, serial number 602678, .22-caliber, received --

Q Now -- go ahead.

A -- received by us on 12-2-67, from General Wholesale, sold on 7-14-68, to a Fred Allen Evans, 11105 Superior, Cleveland, Ohio.

Q And that exhibit reflects a serial number, too?

A Yes, sir.

Q 602678?

A Yes.

(State's Exhibit No. 58  
was marked for identification.)

Q Showing you State's Exhibit 58, will you please examine this exhibit, along with 56, and tell us if you can identify same?

A Yes, sir, that is a Winchester, Model 190, Serial No. 602678.

Q Identical with the serial number appearing on the sales slip represented in State's Exhibit 56?

A Correct.

Q And made out to Fred Evans?

A Yes.

Q Now, tell me, sir, did you make this sale?

A No, sir.

Q Who did?

A George Kurk.

Q Who is George Kurk?

A One of our sales people.

Q Is he out in the hall?

A Yes, sir.

Q While you are here, sir, can you briefly explain to the jury, State's Exhibit 55 and 56, which you have brought in under subpoena, what are these, by way of your records or whatever?

A These are our standard records. This record is made

upon the receipt of the weapon and is disposed of after the weapon has been disposed. These are filed away alphabetically for each and every weapon received and each and every weapon disposed of.

Q Is this the only record you have of a sale of a weapon?

A Yes, sir.

Q And these you brought from your own office?

A From our records, right.

Q To the Court?

A Yes.

Q Did we have the price of those weapons on the sheet or not?

A No.

Q Do you have any recollection what they went for in July?

A \$44.90.

Q Each?

A Yes, sir.

Q Do you know whether, from your knowledge and recalling of the sale that you made, whether there were any other items sold with that gun?

A No, sir.

Q No, it wasn't or you don't recall?

A I don't recall.

Q I see. If there were, would you have other slips



for it?

A No, sir.

Q Why would you not have other slips?

MR. FLEMING: Objection.

THE COURT: Overruled.

A Why we would not have other slips? It's cash-and-carry business.

Q I see. And your ammo is not recorded?

A It is now. It wasn't then.

Q But it wasn't then?

A No, sir.

Q And the only thing by way of recordation you had in the guns or weapon department would be just the guns?

A Yes, sir.

MR. LAURIE: Thank you.

CROSS-EXAMINATION

BY MR. FLEMING:

MR. FLEMING: If it please the Court.

Q Now, Mr. Borsellino, this fellow Ralph Smith that you sold the rifle to on the 11th, have you ever seen him again?

A No, sir, I wouldn't know if I have or haven't, let's put it that way.

Q You wouldn't know him if you saw him again?

A No, sir.

Q In other words, the police, did they give you photographs in an effort to get you to identify Ralph Smith?

A No, sir.

Q They never did?

A No, sir, not that I know of. I seen a lot of photographs, but no Ralph Smith was pointed out to me.

Q Was Ahmed Evans pointed out to you?

A No, sir, I was shown photographs.

Q So you wouldn't know either one of them if you saw them again?

A No, sir.

Q When did you first talk to the police about this matter?

A In July.

Q About when in July, do you know?

A Well, it has to be about the 26th or 27th of July.

Q Did you come here today by way of a subpoena?

A Yes, sir.

Q Do you have it?

A Yes, sir.

(The document was handed to counsel.)

Q Was this served on you by a Deputy Sheriff?

A No, sir.

Q How did you get it?

A I picked it up downstairs.

MR. FLEMING: I see.

(The document was handed back to the witness.)

MR. FLEMING: Nothing further.

MR. LAURIE: That is all I have  
of this witness.

Will you have your salesman come in?

THE WITNESS: Yes, sir.

MR. LAURIE: I forget his name --  
George Kurk.

(Witness excused.)

- - -

THEREUPON, the State of Ohio, further to maintain the issues on its part to be maintained, called as a witness GEORGE KURK, who, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LAURIE:

Q Will you state your full name and spell your last name, sir?

A George Kurk, K-u-r-k.

Q Where is your place of employment?

A 420 Northfield Road.

Q What is the name of it?

A Atlantic Gun & Tackle.

Q Is that Mr. Borsellino's company or he manages it?

A Yes.

Q Is that right?

A Yes, sir.

Q You worked under him?

A Under William A. Borsellino.

Q William A. Borsellino?

A Right.

Q What are your duties there, sir?

A Salesman.

Q How long have you worked for them?

A Four and a half years.

Q Were you working there on or about July 14, 1968?

A Yes, sir.

Q And tell me on that particular date, did you come across a name of Fred Allen Evans?

A Yes, sir.

Q Under what conditions or circumstances did you come across that name?

A The sale of a weapon.

Q The sale of a weapon?

A Yes, sir.

Q Is that gentleman in the court room this afternoon?

A He may be.

Q Well, look around and tell us.

A There is a possibility.

Q What do you mean "a possibility"?

A Sir, I sell -- this has been 10 months ago. I cannot honestly remember if that is him or not.

Q Do you have any idea if that man is in this court room?

A It may be. I sold a gun to a tall, colored male.

Q Would you look around in the court room and see if you can identify the man you sold that gun to?

A There's a possibility that it might be him and there's a possibility it may not. I don't know for sure.

Q Tell us who that possibility is?

MR. TOLLIVER: Objection. He's  
answered the question.

MR. FLEMING: Objection.

THE COURT: Sustained.

Q Will you describe that man that came in and bought  
the gun that day?

A Tall, colored and male.

Q Anything else, how he was dressed or anything?

A No, sir. that's about as far as I can go with my  
description.

Q Do you see a man that reflects those characteristics  
in the court room that afternoon?

MR. TOLLIVER: Objection.

MR. FLEMING: Objection.

THE COURT: He can answer yes

or not, whether he does see a man that reflects  
those characteristics.

A Yes, sir, there is a possibility.

Q Where is he?

A Seated.

Q Where at?

A At the defense table.

Q What is he dressed like there?

A Has on a red vest, et cetera.

MR. FLEMING:  
speaks for itself, Judge.

Objection. That

MR. LAURIE:  
itself?

What speaks for

MR. FLEMING:

The way he is dressed.

MR. LAURIE:  
put a suit on him then?

Then why don't you

THE COURT:  
question.

Proceed with your

Q Showing you State's Exhibit 56, can you identify that exhibit?

A Yes, sir, this is the gun registration which I personally filled out.

Q And made out to who, who was the buyer?

A Fred Allen Evans.

Q Did you receive any identification when you made that slip out?

A Yes, sir, I did.

Q What type of identification did you receive from that prospective buyer?

A A Social Security card.

MR. FLEMING: Objection.

THE COURT: Overruled.

Q And the address and name you got from there?

A That is 11105 Superior.